

§ 130A-22. Administrative penalties.

(a) The Secretary of Environmental Quality may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any term or condition of a permit or order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen thousand dollars (\$15,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars (\$50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). For violations of Part 7 of Article 9 of this Chapter and G.S. 130A-309.10(m): (i) a warning shall be issued for a first violation; (ii) the penalty shall not exceed two hundred dollars (\$200.00) for a second violation; and (iii) the penalty shall not exceed five hundred dollars (\$500.00) for subsequent violations. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environmental Quality shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section.

(b) The Secretary of Environmental Quality may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars (\$25,000) for each day the violation continues.

(b1) The Secretary may impose an administrative penalty on a person who violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in subsection (b2) of this section, the penalty shall not exceed one thousand dollars (\$1,000) per day per violation. Until the Department has notified the person of the violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation.

In determining the amount of a penalty under this subsection or subsection (b2) of this section, the Secretary shall consider all of the following factors:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
- (2) The duration and gravity of the violation.
- (3) The effect on air quality.
- (4) The cost of rectifying the damage.
- (5) The amount of money the violator saved by noncompliance.
- (6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or a rule adopted pursuant to that Article.
- (7) The cost to the State of the enforcement procedures.
- (8) If applicable, the size of the renovation and demolition involved in the violation.

(b2) The penalty for violations of the asbestos NESHAP for demolition and renovation, as defined in G.S. 130A-444, shall not exceed ten thousand dollars (\$10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for demolition and renovation that describes the violation, recommends a general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP for demolition and renovation is not considered to continue during the period a person who has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation.

(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A or 19B of this Chapter or any rules adopted pursuant to Article 19A or 19B of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed five thousand dollars (\$5,000) for each day the violation continues for Article 19A of this Chapter. The penalty shall not exceed five thousand dollars (\$5,000) for each day the violation continues for Article 19B of this Chapter. The penalty authorized by this section does not apply to a person who is not required to be certified under Article 19A or 19B.

(c) The Secretary may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars (\$50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars (\$300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

(c1) The Secretary may impose a monetary penalty on a vendor who violates rules adopted by the Commission pursuant to Article 13 of this Chapter when the Secretary determines that disqualification would result in hardship to participants in the Women, Infants, and Children (WIC) program. The penalty shall be calculated using the following formula: multiply five percent (5%) times the average dollar amount of the vendor's monthly redemptions of WIC food instruments for the 12-month period immediately preceding disqualification, then multiply that product by the number of months of the disqualification period determined by the Secretary.

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of Environmental Quality shall consider all of the following factors:

- (1) Type of violation.
- (2) Type of waste involved.
- (3) Duration of the violation.
- (4) Cause (whether resulting from a negligent, reckless, or intentional act or omission).
- (5) Potential effect on public health and the environment.
- (6) Effectiveness of responsive measures taken by the violator.
- (7) Damage to private property.
- (8) The degree and extent of harm caused by the violation.
- (9) Cost of rectifying any damage.
- (10) The amount of money the violator saved by noncompliance.

- (11) The violator's previous record in complying or not complying with the provisions of Article 9 of this Chapter, Article 11 of this Chapter, or G.S. 130A-325, and any regulations adopted thereunder, as applicable to the violation in question.

(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(f) The Commission shall adopt rules concerning the imposition of administrative penalties under this section.

(g) The Secretary or the Secretary of Environmental Quality may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of an administrative penalty authorized under this section whenever a person:

- (1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or
- (2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the final agency decision.

(h) A local health director may impose an administrative penalty on any person who willfully violates the wastewater collection, treatment, and disposal rules of the local board of health adopted pursuant to G.S. 130A-335(c) or who willfully violates a condition imposed upon a permit issued under the approved local rules. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. The local health director shall establish and recover the amount of the administrative penalty in accordance with subsections (d) and (g). Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars (\$50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars (\$300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling. A person contesting a penalty imposed under this subsection shall be entitled to an administrative hearing and judicial review in accordance with G.S. 130A-24. A local board of health shall adopt rules concerning the imposition of administrative penalties under this subsection.

(h1) A local health director may take the following actions and may impose the following administrative penalty on a person who manages, operates, or controls a public place or place of employment and fails to comply with the provisions of Part 1C of Article 23 of this Chapter or with rules adopted thereunder or with local ordinances, rules, laws, or policies adopted pursuant to Part 2 of Article 23 of this Chapter:

- (1) First violation. – Provide the person in violation with written notice of the person's first violation and notification of action to be taken in the event of subsequent violations.
- (2) Second violation. – Provide the person in violation with written notice of the person's second violation and notification of administrative penalties to be imposed for subsequent violations.
- (3) Subsequent violations. – Impose on the person in violation an administrative penalty of not more than two hundred dollars (\$200.00) for the third and subsequent violations.

Each day on which a violation of this Article or rules adopted pursuant to this Article occurs may be considered a separate and distinct violation. Notwithstanding G.S. 130A-25, a violation of Article 23 of this Chapter shall not be punishable as a criminal violation.

(i) The clear proceeds of penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(j) The Secretary of Environmental Quality may also assess the reasonable costs of any investigation, inspection, or monitoring associated with the assessment of the civil penalty against any person who is assessed a civil penalty under this section. (1983, c. 891, s. 2; 1987, c. 269, s. 2; c. 656; c. 704, s. 1; c. 827, s. 247; 1989, c. 742, s. 4; 1991, c. 691, s. 1; c. 725, s. 8; 1991 (Reg. Sess., 1992), c. 944, s. 11; 1993 (Reg. Sess., 1994), c. 686, s. 1; 1995, c. 504, s. 8; 1997-443, s. 11A.64; 1997-523, s. 2; 1998-215, s. 54(a); 2001-474, s. 21; 2002-154, s. 1; 2007-550, ss. 3(a), 4(a); 2009-27, s. 2; 2009-163, s. 2; 2009-488, s. 2; 2010-180, s. 14(c); 2011-145, s. 13.3(xx); 2013-378, s. 7; 2013-413, s. 49; 2015-241, s. 14.30(v); 2017-209, s. 19(b).)